



**The Comptroller General
of the United States**

Washington, D.C. 20548

Wickopf

Decision

Matter of: B-212935.4
File: Flach's Power Piping, Inc.--Reconsideration
Date: April 17, 1987

DIGEST

1. Timeliness dismissal is affirmed where the protester presents for the first time facts available when the protest was filed to establish timeliness.
2. General Accounting Office will not consider a protest where it involves a matter that is the subject of litigation before a court of competent jurisdiction unless the court requests a decision.

DECISION

Flach's Power Piping, Inc. requests reconsideration of our dismissal of its protest under invitation for bids (IFB) No. DAAA22-83-B-9022. The IFB was issued by the Army under step two of a two-step sealed bidding procurement for a chrome plating facility at Watervliet, New York. Flach's bid was rejected as nonresponsive for failing to acknowledge an amendment reducing the progress payment rate applicable to Flach as a small business. We dismissed the protest because it was not filed within 10 working days after the basis for protest was known as required by our Bid Protest Regulations. 4 C.F.R. § 21.12(a)(2) (1986).

Flach now states that it filed an initial timely protest with the Army and that its protest to this Office was filed within 10 working days after receipt of the Army's written notice denying the initial protest. Flach argues that its protest therefore was timely under 4 C.F.R. § 21.2(a)(3), which provides that if a timely protest has been filed initially with the contracting agency, any subsequent protest to this Office must be filed within 10 working days of formal notification or actual or constructive knowledge of initial adverse agency action.

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In any event, we understand that the responsiveness of Flach's bid is the subject of litigation before a court of competent jurisdiction. Sterling Millwrights, Inc. v. United States, Cl. Ct. No. 15-87C. Under our regulations, we will not consider a protest involving a matter which is before a court of competent jurisdiction unless the court requests our decision. 4 C.F.R. § 21.3(f)(11) (1986); Adams & Associates Travel Inc., et al., B-216673.2 et al., Feb. 1, 1985, 85-1 CPD ¶ 124.

Our dismissal is affirmed.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel